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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MATTHEW MILES COLEMAN,

9 Petitioner,

10 v.

11 JEFFREY A. UTTECHT,

12 Respondent.

CASE NO. C19-5666 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 13.

15 On July 22, 2019, Petitioner filed a proposed petition for writ of habeas corpus
16 challenging his incarceration in Washington State. Dkt. 1. Petitioner argues that his
17 conviction is unlawful because he was charged by information, rather than by an
18 indictment issued by a grand jury, and that the Washington courts lack authority to
19 adjudicate this claim. *Id.*; *see also* Dkt. 6 (petition for writ of habeas corpus). On
20 September 27, 2019, Respondent responded. Dkt. 11.

21 On November 18, 2019, Judge Creatura issued the R&R recommending
22 Petitioner’s petition be dismissed with prejudice as untimely. Dkt. 13. On December 4,

1 2019, Petitioner filed a notice of appeal. Dkt. 14. On December 17, 2019, Petitioner filed
2 motions to amend the case caption and his habeas petition, Dkts. 16, 17, and an amended
3 notice of appeal, Dkt. 18. On December 18, 2019, the Ninth Circuit dismissed
4 Petitioner's appeal as premature because a R&R issued by a magistrate judge is not
5 appealable as a final order or judgment. Dkt. 19.

6 The district judge must determine de novo any part of the magistrate judge's
7 disposition that has been properly objected to. The district judge may accept, reject, or
8 modify the recommended disposition; receive further evidence; or return the matter to the
9 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3). Although Petitioner failed to
10 formally object to the R&R, his notice of appeal and motion to amend habeas petition
11 appear to challenge the R&R's conclusion that his petition is untimely. Dkts. 14, 17.
12 Therefore, the Court construes those pleadings as objections to the R&R. *See Estelle v.*
13 *Gamble*, 429 U.S. 97, 106 (1976) (stating that handwritten pro se documents should be
14 liberally construed).

15 In this case, Petitioner argues that his petition is an original civil action not subject
16 to the one-year limitations period for federal habeas petitions prescribed by the
17 Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2241 *et seq.* *See,*
18 *e.g.*, Dkt. 17 at 1–4. However, Petitioner admits he is incarcerated under a state court
19 judgment and that he challenges his conviction and sentence pursuant to the federal
20 habeas statute, 28 U.S.C. § 2254. *Id.* at 1; *see also* Dkt. 6. Thus, Petitioner fails to
21 convince the Court that AEDPA's limitations period is not applicable to his federal
22 habeas petition. Because Petitioner filed his petition more than one year after his

1 judgment of conviction become final, *see* Dkt. 13 at 2–4, the Court agrees with the R&R
2 that the petition is untimely.

3 Petitioner raises numerous other objections that are meritless. Therefore, the Court
4 having considered the R&R, Petitioner’s notice of appeal and motion to amend petition,
5 and the remaining record, does hereby find and order as follows:

- 6 (1) The R&R is **ADOPTED**;
- 7 (2) Petitioner’s federal habeas petition is **DISMISSED with prejudice**;
- 8 (3) A Certificate of Appealability is **DENIED**;
- 9 (4) Petitioner’s motion to amend case caption, Dkt. 16, and motion to amend
10 habeas petition, Dkt. 17, are **DENIED as moot**; and
- 11 (5) The Clerk shall enter **JUDGMENT** and close the case.

12 Dated this 3rd day of January, 2020.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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